



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Frequency Engineering Laboratories
Corporation
File: B-225606
Date: April 9, 1987

DIGEST

Where the solicitation states that proposed price is the most important evaluation factor for source selection purposes, but also clearly provides that technical and management factors, although of lesser importance, will be thoroughly evaluated as well, there is nothing improper in the selection of a higher-priced offeror when the agency reasonably determines that the selected firm's evidenced technical superiority offsets the price premium associated with its offer.

DECISION

Frequency Engineering Laboratories (FEL) protests the award of a contract to E-Systems, Inc. under request for proposals (RFP) No. N00039-85-R-0651(Q), issued by the Department of the Navy. The procurement is for the supply of AN/WSC-3(V) communication sets. FEL complains that the Navy failed to evaluate the proposals properly in accordance with the evaluation and source selection criteria set forth in the solicitation, thereby disregarding the statutory requirement for full and open competition.

We deny the protest.

BACKGROUND

The RFP was issued on November 26, 1985, contemplating the award of a firm-fixed-price contract for a quantity of AN-WSC-3(V) communications sets, plus options, with a first article testing requirement. The AN-WSC-3(V) is described by the Navy as the primary Ultra High Frequency (UHF) communication system aboard Naval vessels.

The RFP's stated evaluation and source selection criteria provided that the government reserved the right to make an award to other than the lowest-price offeror and select the proposal determined to be most advantageous to the

038576

government, price and other factors considered. Offerors were advised that price was more important than the technical and management factors combined, with management factors being of lesser importance than technical criteria. Although not disclosed to the offerors, the Navy assigned weights to the various factors for evaluation purposes which were consistent with the descriptions given in the solicitation. Thus, price was weighted at 52 percent, technical at 39 percent, and management at 9 percent.

The RFP provided that each offeror's proposed price would be evaluated for award purposes on the basis of the total price for all firm requirements in all program years plus the total price for all option requirements, with the exception of a few specified optional items. Offerors were advised that the offeror submitting the proposal with the lowest total price would be assigned all of the points allocated for price, with higher-priced offerors receiving a lesser number of points in direct proportion to the degree by which their price exceeded the lowest price. The submission of alternate offers based upon the government's waiver of first article testing was also expressly allowed.

Initial proposals were received from five firms, including E-Systems, which was the incumbent contractor, FEL, and La Pointe Industries, Inc.^{1/} La Pointe submitted the lowest-price proposal at approximately \$41 million dollars, and, accordingly, received the full 52 weighted points allocated to price. FEL's initial price was approximately \$44.5 million and E-System's price was \$60.6 million with first article testing, and \$60.3 million with waiver of such testing. The firms were assigned price points in relation to the percentage by which their prices exceeded the low price submitted by La Pointe. Accordingly, FEL's price score was 47.6 and E-Systems' was 27.2 with, and 27.6 without, first article testing.

The proposals were then evaluated on the basis of the technical and management factors set forth in the RFP. E-Systems' proposal received the highest scores, receiving 36.8 out of a possible 39 weighted points for technical criteria, and 8.4 out of a possible 9.0 points for the management elements. In contrast, FEL's respective scores were 30.0 and 7.0. (La Pointe's scores were 18.0 and 5.2.) The scores represented the evaluators' overall determination

^{1/} La Pointe had also protested the award to E-Systems on grounds similar to those raised by FEL, but La Pointe later withdrew the protest. We include a discussion of La Pointe's competitive ranking here merely for comparative purposes.

that E-Systems' proposal was excellent overall, and markedly superior to FEL's to the extent of offering the least risk of unsuccessful contract performance. FEL was considered to have submitted a strong proposal, but with a significantly lesser degree of assurance that the government's requirements would be timely met. The greatest concerns voiced by the evaluators were in the areas of risk management and first article testing.

The Navy then ranked the proposals as to highest total point score by adding the weighted price scores to the weighted technical and management scores.^{2/} FEL was ranked first, with a total score of 84.6, La Pointe ranked second with a score of 75.2, and E-System's ranked third with a total score of 72.4 with, and 72.8 without, first article testing. E-Systems' overall score was lower than either FEL's or La Pointe's because, despite its excellent technical/management rating, the firm's proposed price, the most important evaluation factor, was at this point in the competition relatively much higher than either FEL's or La Pointe's.

E-Systems, FEL, La Pointe, and a fourth firm were determined to have submitted proposals within the competitive range. The Navy then entered into written discussions with the competitive range offerors by submitting for response various questions related to perceived technical deficiencies in the proposals. In its written interrogatory to FEL, the Navy - pointed out its concerns with respect to risk management and first article testing, and also asked a series of questions relative to such areas of the firm's proposal as the qualifications of its proposed engineering personnel in UHF communications, FEL's plan to "build to print," its manufacturing approach, and production lead time. The Navy's interrogatory to E-Systems solely concerned rights in data to be furnished under the contract.

Upon submission of the firms' responses, the proposals were reevaluated and rescored. Although E-Systems, FEL, and La Pointe all received slight scoring increases for the technical factors as a result of this reevaluation, their respective competitive positions in the overall ranking did not change.

^{2/} We note that the RFP did not provide that award would be made strictly on the basis of the highest overall point score. We have held that an evaluation scheme which in fact provides for award on that basis, although not improper, is unwise because it limits the contracting agency's flexibility and discretion in making its source selection decision. Harrison Systems Ltd., 63 Comp. Gen. 379 (1984), 84-1 CPD ¶ 572.

The Navy then requested best and final offers (BAFOS) from the four firms. La Pointe submitted a BAFO price of approximately \$48.3 million, which, although an increase of some \$7 million over its initial price, still remained the low price. FEL as well increased its price upon submission of its BAFO from \$44.5 million to \$51.2 million. However, E-Systems made a significant reduction in its price from \$60.6 million to \$57.6 million with first article testing, and from \$60.3 million to \$57.3 million without the first article requirement.

As a result of this reduction, E-Systems weighted scores for price increased markedly because, in relation to La Pointe's still low price, there was now a much smaller difference between the two offers than had existed previously for purposes of proportioning the 52 weighted price points available. Therefore, E-Systems was able to displace both FEL and La Pointe to become the first-ranked offeror in terms of total weighted score:

	Tech.	Mgt.	Price	Total
E-Systems (with first articles)	37.3	8.4	42.3	88.0
(without first articles)	37.3	8.4	42.0	87.7
FEL	30.8	6.9	48.8	86.5 _
La Pointe	19.0	5.2	52.0	76.2

The evaluators then recommended to the contracting officer, who was the source selection official for the procurement, that the award be made to E-Systems on the bases of (1) its total overall score, which was the highest both with and without first article testing; and (2) the demonstrated technical soundness of its proposal, especially with regard to the reduced level of risk associated with E-Systems' prospective performance of the contract. The evaluators noted the firm's near-perfect scores in both the technical and management categories, as well as the experience of its proposed personnel in UHF communications.

In contrast, the evaluators felt that FEL's personnel lacked experience in UHF equipment similar to the sets being acquired, and that this lack of experience would only increase the degree of risk in such critical areas as first article testing and initial product deliveries. The evaluators concluded that, " . . . FEL's weaknesses . . . presented sufficient risk to question its ability to meet the prescribed schedule, while E-Systems did not."

The source selection official concurred with the evaluators' findings and selected E-Systems for the award, subject to approval by higher authority. The selection official noted that the firm had received the greatest overall number of evaluation points based on the criteria of price, technical, and management, and determined that the higher price of its offer was offset by its evidenced superiority, as the proposal was rated approximately 21% higher than FEL's for the technical and management factors. Specifically, he found that:

" . . . E-Systems' thorough understanding of the AN-WSC-3 was reflected in their proposal presentation . . . [which] demonstrated with a high degree of confidence that it has the personnel and experience necessary to produce the radio in accordance with the required schedule."

The source selection official further noted that the areas of risk identified in FEL's proposal remained after discussions, and that the evaluators "seriously question[ed] whether the key personnel proposed by FEL have the knowledge and experience necessary to resolve these four areas of risk." Because E-Systems' proposal, although higher in price, did not present such concerns, he concluded that award to the firm would be in the best interest of the government. FEL's protest followed the Navy's award to E-Systems. -

PROTEST POSITION

FEL's essential basis for protest is the assertion that the Navy's evaluation of proposals was inconsistent with the criteria stated in the RFP, and, in consequence, the firm was deprived of its opportunity to compete fairly for the award. FEL asserts that the Navy placed undue emphasis on E-Systems' incumbency, an unstated factor, in assigning the evaluation points. FEL contends that the Navy's favorable view of E-Systems' past performance became "an overwhelming factor" in scoring the proposals, in place of those criteria expressly delineated in the solicitation.

Moreover, FEL contends the fact that the RFP had stated that price was the most important evaluation factor required the Navy to make an independent determination of E-Systems' technical superiority--that is, a comprehensive finding rather than one merely reflecting the higher scores assigned to E-Systems' proposal during the evaluation process. FEL asserts that no such independent determination was made, which was a failure especially egregious given that FEL's total evaluated price was some 11 percent lower than

E-Systems'--a quantum difference of more than \$5 million--and its proposal met the government's requirements in all respects from a technical standpoint.

In essence, FEL contends that the selection of E-Systems violated the statutory requirement for full and open competition, urging that E-Systems was given preferential consideration during the Navy's evaluation because of its status as the incumbent. Hence, FEL asserts that the evaluation results were tainted by that bias and cannot be used to justify E-Systems' selection.

ANALYSIS

To the extent FEL contends that the award to E-Systems, a higher-priced offeror, was inconsistent with the RFP's stated provision that price was the most important evaluation factor, it is well settled that, in a negotiated procurement, the government is not required to make award to the firm offering the lowest price unless the RFP in fact specifies that price will be the determinative factor. Ray Camp, Inc., B-221004, Feb. 27, 1986, 86-1 CPD ¶ 205; Norfolk Ship Systems, Inc., B-219404, Sept. 19, 1985, 85-2 CPD ¶ 309. Thus, in the absence of such an express provision, the procuring agency retains the discretion to select a more highly priced but also more highly rated proposal, if doing so is in the government's best interest and is consistent with the solicitation's stated evaluation and source selection scheme. Ray Camp, Inc., B-221004, supra, 86-1 CPD ¶ 205 at 3.

In the present matter, it is clear that the RFP made no representation that price alone would be the sole basis for award--we note again that the government expressly reserved the right to make award to other than the lowest-price offeror--but rather that price would be the most heavily weighted of the three major evaluation criteria. The RFP's reference to "price and other factors" as the criterion for selection clearly meant that those "other factors" to be considered by the Navy were the technical and management elements fully set forth in the solicitation. Hence, although technical and management considerations may have been, individually and collectively, of lesser importance than price, it is obvious that they were to be used in rating the comparative merits of the proposals. We find no indication that the RFP contemplated that an award would be made strictly to the lowest-priced firm whose proposal was determined to be technically acceptable. Cf. Kreonite, Inc., B-222439, July 11, 1986, 86-2 CPD ¶ 60; Los Angeles Community College District, B-207096.2, Aug. 8, 1983, 83-2 CPD ¶ 175 (award must be made to the lowest-priced, technically

acceptable offeror where "price and other factors" is the stated selection criterion and there is no provision that offers would be evaluated for relative technical superiority).

We conclude, therefore, that the terms of the RFP allowed the Navy to make the cost/technical tradeoff normally made in a negotiated procurement for purposes of selecting the successful offeror. The only question, then, is whether the selection of E-Systems' offer instead of FEL's was a procurement decision rationally based and consistent with the established evaluation criteria. Grey Advertising, Inc., 55 Comp.Gen. 1111 (1976), 76-1 CPD ¶ 325.

We believe the facts establish that the Navy evaluated the proposals in accordance with the scheme set forth in the RFP. As noted earlier, the weight actually assigned to price (52 percent) was greater than the total weights for technical (39 percent) and management (9 percent), consistent with the RFP's statement that price was more important than the combination of the two. FEL's proposal was consistently rated higher than E-Systems' for price because, although not the lowest offeror, FEL continued to propose a price lower than E-Systems'. Accordingly, the firm's offer always received a greater proportion of the 52 evaluation points available for that factor, and, until the submission of BAFOS, FEL enjoyed a competitive advantage over E-Systems to the extent that its combined score for price, technical, and management factors was higher than E-Systems'.

However, when FEL submitted its BAFO, with full knowledge that price was the most important evaluation factor, the firm raised its price by nearly \$7 million, whereas E-Systems at the same time reduced its price by \$3 million. FEL's business decision to increase its price by some 15 percent materially weakened its competitive position because its weighted price score was no longer significantly higher than E-Systems' and no longer offset its lower technical/management scores. Thus, as a result of FEL's action and E-Systems' price reduction, FEL simply lost its position as the offeror with the highest total combined score. Even though highest total point score was not the stated basis for award, note 1, supra, see also ICOS Corp. of America, B-225392, Feb. 10, 1987, 66 Comp. Gen. _____, 87-1 CPD ¶ 146, it certainly was relevant to the Navy's ultimate selection decision for comparison purposes.

FEL has also argued that the Navy, during its technical evaluation, placed undue emphasis on E-Systems' successful past performance as the incumbent. FEL recognizes that, as

a general rule, a competitive advantage gained through incumbency is not an unfair advantage which must be eliminated, and, therefore, that a firm's prior performance may properly be considered by an agency in evaluating proposals. Employment Perspectives, B-218338, June 24, 1985, 85-1 CPD ¶ 715. However, FEL nevertheless believes that E-Systems' technical scoring advantage was based primarily on the agency's favorable view of E-Systems' incumbency, rather than on any innate technical superiority of the firm's proposal.

It is true that a numerical scoring advantage based primarily on the advantages of incumbency may not necessarily indicate a significant technical advantage that would warrant paying a substantial cost premium for it. Bunker Ramo Corp., 56 Comp. Gen. 712 (1977), 77-1 CPD ¶ 427. In NUS Corp. et al., B-221863 et al., June 20, 1986, 86-1 CPD ¶ 574, a recent decision cited by FEL in support of its position, we objected to an award to the incumbent where the slight technical scoring advantage enjoyed by the firm appeared to be the result of evaluation scores assigned on the basis of a favorable incumbency. In other words, we found no indication in the evaluation record that the incumbent's proposal demonstrated any real technical superiority over the protester's.

However, the present case is clearly distinguishable from NUS. Here, the Navy's evaluators noted a marked superiority of E-Systems' proposal over FEL's due in large part to the fact that E-Systems had the necessary personnel experienced in UHF communications so as to expose the government to a much lesser risk of unsuccessful performance. Although the firm's possession of experienced personnel obviously stemmed from its incumbency, we simply cannot view this as an unfair competitive advantage to be eliminated. Employment Perspectives, B-218338, supra. To the extent FEL's proposal was rated lower for not proposing personnel with commensurate experience, the selection of personnel was clearly within FEL's control, and FEL does not contend that its personnel were as experienced as E-Systems'. Hence, FEL cannot be heard to complain that the Navy unreasonably concluded for this reason that its proposal presented high degrees of risk in certain areas.

The fact that greater degrees of risk are reasonably perceived by an agency to exist with respect to a new competitor does not, in our view, necessarily mean that the incumbent is being evaluated preferentially, and we have consistently held that an agency's concerns as to the levels of risk inherent in a proposal are proper factors to be

considered in the source selection process. See Space Communications Co., B-223326.2 et al., Oct. 2, 1986, 66 Comp. Gen. _____, 86-2 CPD ¶ 377. Thus, we see no basis here to question the Navy's judgment that FEL's proposal deficiencies relating to the availability of personnel sufficiently experienced in UHF communications, deficiencies which the Navy noted had not been resolved at the conclusion of discussions, presented levels of risk in unfavorable contrast to E-Systems' more secure offer. Id.; Laser Photonics, Inc., B-214356, Oct. 29, 1984, 84-2 CPD ¶ 470.

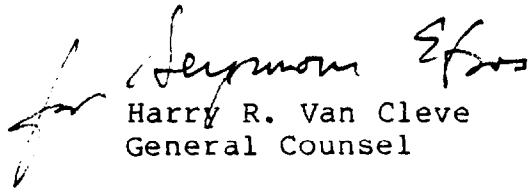
FEL also contends that the Navy failed to make an independent determination that E-Systems' proposal was technically superior to FEL's so as to justify an award at E-Systems' 11 percent higher price. In this regard, we agree that a source selection official bears the responsibility to determine whether technical point advantages are worth their higher cost. SETAC, Inc., 62 Comp. Gen. 577 (1983), 83-2 CPD ¶ 121. In other words, technical point scores, although useful guides for selection decisions, should not be overly relied upon, and whether a given point spread between two competing proposals indicates a significant superiority of one proposal over another depends on the facts and circumstances of each case. RCA Service Co., B-208871, Aug. 22, 1983, 83-2 CPD ¶ 221. Thus, a contract award should not be based on the difference in technical score alone, but should reflect the source selection official's considered judgment of the significance of that difference. 52 Comp. Gen. 358 (1972).

However, the record here provides no support for FEL's contention that the source selection official failed to make an independent cost/technical tradeoff determination in selecting E-Systems for the award. The selection official noted the degrees of risk involved with FEL's offer, and ultimately concluded that E-Systems' full understanding of the requirement and its evident capability to meet the needs of the government fully justified its higher price. Since, among other things, he specifically found that E-Systems' technical superiority was "reflected in" the firm's proposal presentation, we reject FEL's suggestion that his selection decision merely countenanced the evaluators' unfair preference for the incumbent. Cf. NUS Corp. et al., B-221863 et al., supra (failure of source selection official to make a separate determination of technical superiority apart from superficial recognition of slightly higher evaluation scores). Rather, the selection official's decision here, in our view, represented his reasonable judgment that E-Systems' proposal was worth the price asked for it, and that

acceptance of FEL's proposal with significant remaining risk would not be in the government's best interest despite its lower price.

Notwithstanding the fact that price was stated to be the most important evaluation factor, we see nothing objectionable in the Navy's ultimate determination that E-Systems' 21 percent higher technical score offset its 11 percent higher price. FEL itself has noted that the Navy's evaluators determined that this 21 percent differential did not adequately reflect the actual technical difference between the two proposals, which, in the evaluators' view, was even greater. Thus, FEL cannot successfully argue that the source selection official had no basis to conclude that the point spread here clearly indicated E-Systems' technical superiority. See DLI Engineering Corp., B-218335, June 28, 1985, 85-1 CPD ¶ 742. Since the Navy fairly considered the competitive proposals with respect to both price and other evaluated factors in strict accordance with the terms of the RFP, we therefore fail to see how the selection of E-Systems violated the statutory requirement for full and open competition. See 10 U.S.C. § 2304(a)(1)(A) (Supp. III 1985).

The protest is denied.


Harry R. Van Cleve
General Counsel